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## Al-Shabazz v. State: Excluding Noncollateral Claims from the Scope of Post-Conviction Relief

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Brewer: Al-Shabazz v. State: Excluding Noncollateral Claims from the Scope

# ***AL-SHABAZZ V. STATE: EXCLUDING NONCOLLATERAL CLAIMS FROM THE SCOPE OF POST-CONVICTION RELIEF***

## I. INTRODUCTION

“The wild ass of the law which the courts cannot control”<sup>1</sup> has been bridled. Sleep will come easier now that the feral beast of burden, writ of coram nobis, has been roped and tied. At common law, coram nobis was a common law writ used to collaterally challenge a conviction or sentence. Despite the writ’s long history, however, its elusive nature consistently defied courts to precisely characterize either its scope or procedure.<sup>2</sup> In the modern era, South Carolina and thirty-two other states<sup>3</sup> have developed Post-Conviction Relief (PCR) in the tradition of coram nobis.<sup>4</sup> The South Carolina Supreme Court’s recent decision in *Al-Shabazz v. State*<sup>5</sup> allowed the court to clarify those issues reviewable through the PCR<sup>6</sup> mechanism, thus settling age-old questions about the scope of coram nobis as well.

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1. LARRY W. YACKLE, POSTCONVICTION REMEDIES § 8, at 31 (1981).

2. *Id.* at 37, 42.

3. *Id.* at 66-68. See, e.g., COLO. REV. STAT. § 18-1-410 (1999); IDAHO CODE §§ 19-4901 to -4911 (1949); IOWA CODE ANN. § 663A (West 1998); KY. R. CRIM. P. 11.42; MD. CODE ANN., Crimes and Punishments § 645A (1996 & Supp. 1999); MASS. R. CRIM. P. 30; MINN. STAT. ANN. §§ 590.01-.06 (West 1988 & Supp. 2000); MISS. CODE ANN. § 99-35-145 (1972); MONT. CODE ANN. §§ 46-21-101 to -203 (1999); NEB. REV. STAT. §§ 29-3001 to -3101 (1995); N.J. CT. R. ANN. 3:22; N.C. GEN. STAT. §§ 15A-1411 to -1431 (1999); OKLA. STAT. ANN. tit. 22, §§ 1080-1088 (West 1986 & Supp. 2000); R.I. GEN. LAWS §§ 10-9.1-1 to -9 (1997); S.C. CODE ANN. §§ 17-27-10 to -100 (Law. Co-op. 1976 & West Supp. 1999); TENN. CODE ANN. §§ 40-30-201 to -222 (1997); WYO. STAT. ANN. §§ 7-14-101 to -107 (Michie 1999).

4. The writ of coram nobis initiated a post-conviction challenge to the original judgment, resting upon errors of fact. YACKLE, *supra* note 1, at 32. Its objective was a new trial. *Id.* at 31. Early common law entertained neither motions for a new trial nor appellate review. *Id.* at 37. Thus, a line of coram nobis writs developed to accommodate these procedural needs. *Id.* Although a forerunner to the modern motion for a new trial, coram nobis has not always been viewed as a continuation of the original case. *Id.* at 31, 37. Like habeas corpus, coram nobis typically was an independent civil action challenging a criminal conviction. *Id.* at 33. However, whereas habeas corpus directly attacks the conviction and sentence in the court that *presently* has jurisdiction over the inmate, coram nobis collaterally challenged facts and effects outside the case record before the court of *original* judgment. *Id.* Classic examples include clerical errors by assistants, mistakes in the process of notice and pleading, and any events outside the courtroom that generally call into question the credibility of the judgment. *Id.* at 32.

5. 527 S.E.2d 742 (2000).

6. S.C. CODE ANN. §§ 17-27-10 to -100 (Law. Co-op. 1976 & West Supp. 1999).

Although coram nobis has little practical relation with South Carolina's PCR statute or the court's determination in *Al-Shabazz*,<sup>7</sup> its history is illustrative of how PCR remedies have created timeless confusion and debate. What rights—both procedural and substantive—remain for citizens convicted by the approved criminal system? How do we balance efficient and safe governance of our penal system with a fair and accessible remedy for the wrongly imprisoned and the imprisoned wronged? For what injustices should the convicted have a right to redress? From the King's Bench<sup>8</sup> to the United States Supreme Court, these questions have weighed heavily on judicial minds who have sought to develop a just system of post-conviction relief.<sup>9</sup> Ultimately, such questions have made application of post-conviction remedies, like coram nobis, unpredictable.

Not surprisingly, a conflicted body of case law surrounds South Carolina's PCR Act. Despite the statute's existence, South Carolina has been unable to apply its mandates consistently.<sup>10</sup> Nowhere has this difficulty been more apparent than in the areas of good-time credits<sup>11</sup> and conditions of imprisonment. In *Al-Shabazz* the court finally drew bright-lines that officially

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7. South Carolina's PCR Act is like a coram nobis remedy because the PCR proceeding is "heard in, and before any judge of, a court of competent jurisdiction in the county in which the [original] conviction took place." S.C. CODE ANN. § 17-27-80 (Law. Co-op. 1976 & Supp.1999); See YACKLE, *supra* note 1, at 43. However, by passing the PCR Act, the South Carolina General Assembly intended simply to provide an alternative post-conviction remedy to the federal writ of habeas corpus. 527 S.E.2d at 747-748. State PCR statutes have developed almost entirely in response to encroachment of the federal courts upon state post-conviction remedies. YACKLE, *supra* note 1, at 41. The United States Supreme Court warned that in the "absence of meaningful state procedures" for inmates' federal claims, federal courts would hear applications for the federal writ of habeas corpus. *Id.*; see also *Case v. Nebraska*, 381 U.S. 336, 337 (1965) (encouraging states to provide a clear alternative method of post-conviction relief). Thus, while a comparison with coram nobis provides some meaningful insight for academic purposes, any similarities between South Carolina's present statutory PCR scheme and coram nobis are of little practical consequence.

8. YACKLE, *supra* note 1, at 37-38.

9. *Wolff v. McDonnell*, 418 U.S. 539, 560, 572 (1974).

10. For example, despite the court's prohibition of credit-related and prison condition claims, see, e.g., *Tutt v. State*, 277 S.C. 525, 290 S.E.2d 414, 415 (1982), the South Carolina Supreme Court has permitted inmates to raise claims regarding sentence-related credits in certain instances; see also *Busby v. Moore*, 330 S.C. 201, 202, 498 S.E.2d 883, 884 (1998) (granting PCR application to determine proper calculation of good-time credits); *Harris v. State*, 309 S.C. 466, 424 S.E.2d 509 (1992) (granting PCR application to determine effect of Omnibus Crime bill on earned work credits); *Elmore v. State*, 305 S.C. 456, 457, 409 S.E.2d 397, 398 (1991) (granting PCR application to determine effect of Omnibus Crime bill on earned work credits). Additionally, the state supreme court has since permitted inmates to raise claims as to prison conditions in PCR proceedings. See *Simmons v. State*, 316 S.C. 28, 30, 446 S.E.2d 436, 437 (1994) (finding that "conditions of imprisonment have been considered on a discretionary basis in PCR proceedings").

11. See S.C. CODE ANN. § 24-13-210 (Law. Co-op. Supp. 1998) (allowing an inmate to amass good-time credits to be applied to a reduction in her sentence).

severed these claims from the protection of the state's PCR mechanism in order "to bring finality to this confused area of the law."<sup>12</sup>

In discussing the relative merits of the court's determination in *Al-Shabazz*, this Note will continue to appreciate the enduring and conflicting interests that have historically troubled the development of PCR. While acknowledging that the *Al-Shabazz* court genuinely confronted these contending interests, this Note will suggest that the court's interpretation of South Carolina's PCR Act was detrimental to inmates' protected liberty interests and fundamentally wrong. Part II of this Note will present the facts and issues before the court in *Al-Shabazz*. Part II will also summarize the court's holdings, its reasoning, and the likely effects of its decision. Part III will then analyze the court's interpretation of the PCR Act. Finally, Part III will compare the respective advantages of PCR and Administrative Procedure Act (APA) proceedings and will conclude that South Carolina's PCR Act should be interpreted to include both credits-related and prison condition claims.

## II BACKGROUND

### A. Procedure Under South Carolina's PCR Statute

Before *Al-Shabazz*, inmates used South Carolina's version of the Uniform Post-Conviction Procedure Act<sup>13</sup> to raise issues regarding loss of good-time credits and prison conditions.<sup>14</sup> The Act continues to allow inmates to collaterally challenge<sup>15</sup> the validity of their conviction or incarceration, subsequent to the final disposition of all appeals.<sup>16</sup> Consequently, the Act requires that the challenge allege errors or evidence other than the insufficiency of the original evidence in record.<sup>17</sup> An inmate initiates a civil proceeding by

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12. 527 S.E.2d at 758 (Finney, J., concurring).

13. S.C. CODE ANN. §§ 17-27-10 to -100 (Law. Co-op. 1976 & West Supp. 1999); UNIFORM POST-CONVICTION PROCEDURE ACT (amended 1980), 11A U.L.A. 249 (1995); see *supra* note 10.

14. See S.C. CODE ANN. § 17-27-20(a) (Law. Co-op. 1976 & West Supp. 1999); *Al-Shabazz*, 527 S.E.2d at 748.

15. A "collateral attack" is an incidental proceeding to challenge the force and effect of a prior judicial decision. BLACK'S LAW DICTIONARY 179 (6th ed. 1991).

16. See S.C. CODE ANN. § 17-27-20(a) (Law. Co-op. 1976 & West Supp. 1999); S.C.R. CIV. P. 71.1(b).

17. S.C. CODE ANN. § 17-27-20(a)(6) (Law. Co-op. 1976 & West Supp. 1999). Specifically the Act permits inmates to claim the following:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose the sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or

filing a PCR application with the court in the county of the original conviction.<sup>18</sup> For indigent applicants, the statute requires the court to appoint counsel and cover litigation expenses if a hearing is granted.<sup>19</sup> The state must then respond within thirty days, either by answer or by motion for summary dismissal.<sup>20</sup> The judge may grant a motion for summary judgment by either party.<sup>21</sup> If a hearing is granted, the court enters or denies relief based upon its findings of fact and conclusions of law.<sup>22</sup> *Al-Shabazz* does not modify this process.<sup>23</sup> Rather, the court's determination makes the process inappropriate for the disposition of certain noncollateral claims.<sup>24</sup>

### B. *Al-Shabazz v. State*

Malik Abdul Al-Shabazz amassed certain good-time credits applicable toward a reduction in his sentence while serving an 83 year prison sentence.<sup>25</sup> An Adjustment Committee (Committee) of the South Carolina Department of Corrections (Department), in addition to sentencing Al-Shabazz to solitary confinement, voided a portion of Al-Shabazz's acquired credits.<sup>26</sup> The Committee based the decision on alleged violations of institutional rules.<sup>27</sup>

Subsequently, Al-Shabazz challenged the Committee's determination in his PCR application.<sup>28</sup> Al-Shabazz alleged certain defects in the Committee's adjudication, which he claimed both deviated from the Department's own policies and violated his constitutional rights of due process and equal protection.<sup>29</sup> The alleged defects included the Committee's refusal to provide

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conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or  
(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error . . . . *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

S.C. CODE ANN. § 17-27-20(a) (Law. Co-op. 1976 & West Supp. 1999).

18. *Id.* § 17-27-40.

19. *Id.* § 17-27-60. *See generally* Vance L. Cowden, *Indigent Defense Services For Post-Conviction Relief In South Carolina: Current Problems And Potential Remedies*, 42 S.C.L. REV. 417, 418 (1991) (analyzing the system for assigning counsel in PCR cases and suggesting alternatives for improvement).

20. S.C. CODE ANN. § 17-27-70 (Law. Co-op. 1976 & West Supp. 1999).

21. *Id.*

22. *Id.* § 17-27-80.

23. *Al-Shabazz*, 527 S.E.2d at 746.

24. *Id.* at 749-50.

25. *Id.* at 746.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

competent inmate counsel<sup>30</sup> or to allow Al-Shabazz to call his own witnesses.<sup>31</sup> The state asked the PCR judge to dismiss the application<sup>32</sup> in accordance with *Tutt v. State*.<sup>33</sup> The judge dismissed the case.<sup>34</sup> On appeal, the South Carolina Supreme Court vacated the summary dismissal and remanded the case for a proceeding not inconsistent with the court's holding.<sup>35</sup> Al-Shabazz subsequently filed for a rehearing, which the court granted.<sup>36</sup> The court also permitted the Department, which had not been a party to the original action, to intervene.<sup>37</sup> The court delivered a second opinion which clarified the role of Administrative Law Judges (ALJ) under the new procedure but left the original holdings intact.<sup>38</sup>

The court's decision in *Al-Shabazz* sought to clarify the confusion over the PCR process in two ways. First, the court interpreted the PCR statute not to apply to claims raised by inmates, such as the loss of good-time credits and prison conditions, considered noncollateral matters.<sup>39</sup> Second, the court mandated that such noncollateral claims should be adjudicated under current Department procedures<sup>40</sup> and are entitled to judicial review as contested cases<sup>41</sup> under the South Carolina Administrative Procedures Act (APA).<sup>42</sup>

A noncollateral claim is any grievance by an inmate that does not "challenge . . . the validity of [a] . . . conviction or sentence."<sup>43</sup> The court specifically held that claims "regarding sentence-related credits or other condition of imprisonment . . . [do] not affect the validity of the underlying

30. The Department's policy is to provide "substitute counsel" to represent inmates at a correctional hearing. *Id.* at 751. See *South Carolina Department of Corrections Manual for Operations*, Inmate Disciplinary System, No. OP-22.14.

31. *Al-Shabazz*, 527 S.E.2d at 746.

32. *Id.* at 746.

33. 277 S.C. 525, 526, 290 S.E.2d 414, 415 (1982) (holding that PCR is appropriate only when claiming "to have a sentence vacated, set aside or corrected" and not appropriate to challenge the loss of good-time credits and prison conditions).

34. *Al-Shabazz*, 527 S.E.2d at 746.

35. *Id.* at 758.

36. *Id.* at 745.

37. *Id.*

38. *Id.* at 752-58.

39. *Al-Shabazz*, 527 S.E.2d at 750. The court noted that "PCR is a proper avenue of relief only when the applicant mounts a *collateral* attack challenging the validity of his conviction or sentence . . ." *Id.* (emphasis added). There are two noncollateral exceptions to the court's holding. These two exceptions are expressly provided for in section 17-27-20(a)(5) of the PCR statute: "Any person who has been convicted of, or sentenced for, a crime and who claims: . . . That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint . . ." § 17-27-20(a)(5).

40. *Al-Shabazz*, 527 S.E.2d at 752.

41. A "'contested case' means a proceeding . . . in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. CODE ANN. § 1-23-310(3) (La w. Co-op. Supp. 1999).

42. *Al-Shabazz*, 527 S.E.2d at 750; see S.C. CODE ANN. §§ 1-23-310 to -400 (Law. Co-op. 1986 & Supp. 1998).

43. *Al-Shabazz*, 527 S.E.2d at 749.

conviction or sentence.”<sup>44</sup> Hence, such claims are noncollateral matters and consequently impermissible in a PCR application.<sup>45</sup> To support its finding, the court directed its attention to the newly-enacted statute of limitations for PCR applications.<sup>46</sup> The one year limitation applies even to “newly discovered material facts that require vacation of a conviction or sentence.”<sup>47</sup> The argument follows that because credit-related and prison-condition claims can presumably arise well beyond the one-year statutory window, the legislature, like the court, must have regarded these claims as inappropriate in a PCR application.<sup>48</sup>

The court’s inclination to bar such claims was not entirely new. In *Tutt v. State* noncollateral matters, specifically loss of good-time credits and conditions of imprisonment, had already been rejected by the court as inappropriate for a PCR proceeding.<sup>49</sup> The court in *Tutt* affirmed the lower court’s decision to deny an inmate a post-conviction relief hearing for claims related to prison conditions and loss of good-time credits.<sup>50</sup> The court held that the PCR Act may be “invoked only by someone who is claiming the right to have a sentence vacated, set aside or corrected.”<sup>51</sup>

While *Tutt* was the obvious precursor to the decision in *Al-Shabazz*, *Tutt* was less expansive than *Al-Shabazz* in three respects. *Tutt* contained no explicit prohibition of all noncollateral matters. Additionally, *Tutt*’s holding does not clearly address loss of good-time credits. Finally, and most notably, the *Tutt* decision provided no alternative by which inmates might pursue these noncollateral matters. Consequently, the courts continued to permit such claims in PCR proceedings because PCR provided “an established and uniform process, as well as the availability of appointed counsel.”<sup>52</sup> Therefore, *Al-*

44. *Id.*

45. *Id.*

46. S.C. CODE ANN. § 17-27-45(A) (Law. Co-op. Supp. 1998).

47. *Al-Shabazz*, 527 S.E.2d at 748-749.

48. *See Id.* However, there is no indication that the General Assembly intended such an adverse effect on noncollateral claims.

49. 277 S.C. 525, 526, 290 S.E.2d 414, 415 (1982). The actual holding of *Tutt* may not include loss of good-time credits. While *Tutt* sought the “restoration of good-time lost” in his PCR application, it is unclear whether the dismissal of that particular claim was actually an issue on appeal. *Id.* The supreme court stated that the court below had dismissed the allegations because the court lacked “jurisdiction to consider questions pertaining to prison living conditions.” *Id.* (emphasis added). This statement appears to be the specific decision that the supreme court affirmed. The case does not explain the disposition of the other claims including the restoration of good-time credits. Most likely, the calculation of good-time credits determined the status of *Tutt*’s living conditions. Ultimately, the court’s holding, that the PCR statute may be “invoked only by someone who is claiming the right to have a sentence vacated, set aside or corrected,” appears broad enough so as to exclude good-time credit claims as well. *Id.* Thus the holding also appears to prohibit credit-related claims. *Id.* Regardless, *Al-Shabazz* resolves the question affirmatively. *Al-Shabazz*, 527 S.E.2d at 749-50.

50. *Tutt*, 277 S.C. at 526, 290 S.E.2d at 415.

51. *Id.*

52. *Al-Shabazz*, 527 S.E.2d at 748.

*Shabazz* was a necessary clarification and expansion of the court's stance on noncollateral issues.

However, *Al-Shabazz* is most notable not for its clarification of ambiguous case precedent but rather for its attempt to provide what it had omitted in *Tutt*: an alternative mechanism to deal with noncollateral matters. If prison conditions and loss of good-time credits could not be challenged within the court system through PCR, then conceivably inmates might not be assured judicial review of such matters at all. Thus the court held that, after a disciplinary hearing, an inmate "may seek [judicial] review of [a] . . . final decision," under the provisions for the contested cases contained in the APA.<sup>53</sup> This holding was a striking departure from the court's own precedent<sup>54</sup> and went to an extent further than any other state in the country.<sup>55</sup> The APA would only be applicable to such noncollateral claims that require procedural due process.<sup>56</sup> *Al-Shabazz* expressly recognized prison conditions and credits-related issues as noncollateral matters which affected liberty interests, thus

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53. *Id.* at 750.

54. Until *Al-Shabazz* the court had never required the use of the APA in Department disciplinary hearings. Having not definitely answered the question in *Tutt*, the court has since had a number of opportunities to consider the use of the APA and has consistently declined to do so. *See* *Busby v. Moore*, 330 S.C. 201, 498 S.E.2d 883 (1998); *Simmons v. State*, 316 S.C. 28, 446 S.E.2d 436 (1994); *Harris v. State*, 309 S.C. 466, 424 S.E.2d 509 (1992); *Elmore v. State*, 305 S.C. 456, 409 S.E.2d 397 (1991). Two years prior to *Tutt*, the court in *Pruitt v. State* suggested that the APA might operate as an alternative to the PCR Act. 274 S.C. 565, 567 n. 2, 266 S.E.2d 779, 780 n.2 (1980). While the question was not ripe, the court did note that the inmate had not sought judicial review under § 1-23-380 of the then recently enacted APA. *Id.* Although not presented squarely with the issue, the court went on to recognize that at least one state, Washington, had decided that prison disciplinary procedures were exempt from judicial review under the state's APA. *Id.* (citing *Dawson v. Hearing Committee*, 597 P.2d 1353, 1357 (Wash. 1979)). Since that time, the courts have continued to review these protected liberty interests in noncollateral matters through discretionary PCR proceedings. *See* *Simmons v. State*, 316 S.C. 28, 29, 446 S.E.2d 436, 437 (1994). Thus, an APA-type proceeding followed by automatic judicial review is clearly a departure from the historical procedure and case law of this state.

55. Iowa, Rhode Island, Washington, Arizona, and Oklahoma declined to apply the APA because the state's APA either expressly exempted prison disciplinary hearings or because the APA was generally not designed for such proceedings. *See* *Rose v. Arizona Dep't. of Corrections*, 804 P.2d 845, 848-9 (Ariz. Ct. App. 1991) (finding that APA does not apply to prison disciplinary proceedings); *Wycoff v. Iowa Dist. Court*, 580 N.W.2d 786, 788 (Iowa 1998) (permitting judicial review of prison disciplinary proceeding under PCR but not APA); *Walen v. Department of Corrections*, 505 N.W.2d 519, 521-22 (Mich. 1993); *Canady v. Reynolds*, 880 P.2d 391, 399 (Okla. Crim. App. 1994) (finding that APA specifically exempted review of prison system determinations); *L'Heureux v. State Dep't of Corrections*, 708 A.2d 549, 553 (R.I. 1998) (finding that APA was not designed to apply to disciplinary proceedings); *Dawson v. Hearing Committee*, 597 P.2d 1353, 1357 (Wash. 1979) (finding that prison disciplinary proceedings lie outside the scope and intent of APA). Alternatively, Michigan has applied a portion of its APA provisions to its prison system.

56. Procedural due process is necessary to protect the deprivation of liberty and property interests. *See* *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972).



requiring administrative due process under the APA and subsequent judicial review.<sup>57</sup>

The court, in some detail, outlined how inmates might pursue judicial review under the new procedure.<sup>58</sup> Inmates will remain subject to the disciplinary procedures as prescribed by the Department.<sup>59</sup> The court found that the Department's disciplinary procedures fully complied with the due process requirements set forth by the United States Supreme Court<sup>60</sup> for "major" disciplinary proceedings.<sup>61</sup> *Al-Shabazz* changes the process after the inmate has been subject to the prison disciplinary hearing. Instead of initiating a civil action against the state through a PCR application, the inmate will now seek review of the "contested case"<sup>62</sup> under the APA.<sup>63</sup> Administrative Law Judges (ALJs) will preside over these appeals.<sup>64</sup> The ALJs will be restricted to an appellate-capacity review of the Department's determination.<sup>65</sup> Consequently, ALJs will not make independent findings of fact or law.<sup>66</sup> Once the ALJ makes a final determination, the inmate may, within thirty days of that decision, file a petition in circuit court for judicial review of the ALJ's findings.<sup>67</sup> Despite the court's continued advocacy of the "hands off" doctrine,<sup>68</sup> inmates will have a guaranteed right of review.<sup>69</sup> The circuit court judge may "not substitute [his or her] judgment for that of the agency as to the weight of the evidence."<sup>70</sup> The ALJ's decision will only be reversed if it is "clearly erroneous in view of . . .

57. *Al-Shabazz*, 527 S.E.2d at 750; see also *Wolff v. McDonnell*, 418 U.S. 539, 560-561 (1974) (stating that a statutory right to sentence-related credits is of "considerable importance" and may be a conditionally protected liberty interest); *Domegan v. Fair*, 859 F.2d 1059, 1064 (1st Cir.1988) (holding that there is a liberty interest in statutorily required prison conditions).

58. *Al-Shabazz*, 527 S.E.2d at 751-758.

59. *Id.* at 751; see SOUTH CAROLINA DEP'T OF CORRECTIONS, MANUAL FOR OPERATIONS, INMATE DISCIPLINARY SYSTEM.

60. *Al-Shabazz*, 527 S.E.2d at 751-52 (citing *Wolff*, 418 U.S. at 563-72).

61. Major disciplinary proceedings carry penalties that threaten a protected liberty interest. See *Al-Shabazz*, 527 S.E.2d at 752 n.8. Consequently, violations that threaten the loss of sentence-related credits require a major disciplinary hearing. *Id.* Appropriately, major disciplinary hearings involve more serious rule violations including "sexual assault upon another inmate, robbery by force, and rioting." *Pruitt v. State*, 274 S.C. 565, 566, 266 S.E.2d 779, 781 (1980).

62. See *supra* note 42.

63. *Al-Shabazz*, 527 S.E.2d at 750.

64. *Id.* at 754.

65. *Id.* (citing *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997)).

66. *Reliance*, 327 S.C. at 534, 489 S.E.2d at 677.

67. S.C. CODE ANN. § 1-23-380(A)(1) (West Supp. 1999).

68. *Al-Shabazz*, 527 S.E.2d at 757; see also *Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 851 (1996) (finding that an inmate has no protected liberty interest where downgrade in prison condition remains within the limits of the sentence imposed); *Crowe v. Leeke*, 273 S.C. 763, 764, 259 S.E.2d 614, 615 (1979) (holding judicial review not available for transfers within prison system or downgrading custody).

69. S.C. CODE ANN. § 1-23-610(B) (West Supp. 1999); *Al-Shabazz*, 527 S.E.2d at 757.

70. S.C. CODE ANN. § 1-23-380(A)(6) (West Supp. 1999).

substantial evidence . . . arbitrary or capricious or characterized by abuse of discretion . . . ”<sup>71</sup>

### III. ANALYSIS

The court admitted that the APA was not designed with the “prison disciplinary system in mind.”<sup>72</sup> In fact, the court declined to apply all of the APA’s provisions to the Department’s internal procedures.<sup>73</sup> Nevertheless, the court still found that the Department qualified as an agency for purposes of the APA.<sup>74</sup> This holding, while logically consistent, was hardly necessary. Invoking the APA was premature because the court’s initial construction of the PCR Act, barring noncollateral claims from PCR proceedings, was wrong. This Note argues that under the PCR Act an inmate might bring credit-related and prison condition claims.<sup>75</sup>

It seems clear, however, that the opportunity to bring these claims under the PCR Act is not worth advocating if the Act is not, in some significant way, superior to the APA. If the APA provides substantially the same or better due process than the PCR Act, then the Court’s decision is good for inmates whether it is necessarily the right interpretation of the PCR Act or not. If, however, the APA, on balance, is less beneficial to inmates than the PCR Act, then a reconsideration of the PCR Act’s correct interpretation is crucial to securing an inmate’s statutory rights under the Act.

The following sections explore these concerns. Part A details why the court’s interpretation of the PCR Act was misguided, while Part B demonstrates how relief under the Act is superior to the *Al-Shabazz* court’s APA procedure.

#### *A. Interpretation of the PCR Act: Chief Justice Finney was Correct*

This Note has already identified the court’s historical discomfort, beginning in *Tutt v. State*,<sup>76</sup> with any interpretation of the PCR Act which might accommodate noncollateral claims. Ultimately, the court chose to preclude such an interpretation altogether.<sup>77</sup> However, both the statutory language and

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71. *Id.* § 1-23-380(A)(6)(e), (f).

72. *Al-Shabazz*, 527 S.E.2d at 752-53.

73. *Id.* at 753. The following APA provisions are not applicable to the “internal prison disciplinary process:” S.C. CODE ANN. §§ 1-23-320, -330, -340, -360 (provisions regarding notice and hearing, evidentiary matters, and communication by the agency assigned to the case).

74. *Al-Shabazz*, 527 S.E.2d at 754.

75. Section 17-27-20(a)(5) reads in relevant part: “Any person who has been convicted of, or sentenced for, a crime and who claims: . . . (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint . . . .”

76. 277 S.C. 525, 290 S.E.2d 414 (1982).

77. *Al-Shabazz*, 527 S.E.2d at 749.

the statutory purpose of the PCR Act suggest that the majority's interpretation may be misguided.

First, the express language of the PCR Act suggests that there is room for the inclusion of noncollateral matters. One reading of section 17-27-20(a)(5) seems to include good-time credits and prison conditions as cognizable claims. The section reads in relevant part: "Any person who has been convicted of, or sentenced for, a crime and who claims . . . he is otherwise unlawfully held in custody or other restraint."<sup>78</sup> While the Department holds a convicted inmate lawfully, an inmate who has been unjustly stripped of his or her good-time credits arguably is being "unlawfully held."<sup>79</sup> Chief Justice Finney subscribed to this reading of the Act but concurred out of concern for judicial harmony and finality.<sup>80</sup> Likewise, Rhode Island's Supreme Court also agreed with this interpretation of its PCR Act.<sup>81</sup> Rhode Island adopted materially the same version of the uniform PCR Act.<sup>82</sup> In *Leonardo v. Vose*<sup>83</sup> the Rhode Island Supreme Court held that PCR applications were the appropriate remedy for challenging the computation of earned good-time credits.<sup>84</sup> In *Leonardo* the inmate sought a determination of his claim under Rhode Island's Administrative Procedures Act.<sup>85</sup> The trial judge concluded that the inmate had incorrectly brought his claim under the state APA and should have made a PCR application instead.<sup>86</sup> The Rhode Island Supreme Court affirmed the trial judge's determination, necessarily holding that the language of the PCR Act included these noncollateral claims.<sup>87</sup>

This reading is also supported by the statutory intent of the PCR Act. The very purpose of state PCR statutes demands the recognition of good-time credit and prison-condition claims. The United States Supreme Court has stated that the states must provide inmates, in lieu of habeas corpus, some method by which to raise claims alleging violations of federal rights.<sup>88</sup> Accordingly, the

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78. S.C. CODE ANN. § 17-27-20(a)(5) (Law. Co-op. 1976).

79. *Id.*

80. *Al-Shabazz*, 527 S.E.2d at 758 (Finney, J., concurring).

81. *Leonardo v. Vose*, 671 A.2d 1232 (R.I. 1996).

82. UNIFORM POST-CONVICTION PROCEDURE ACT, 11A U.L.A. 11 (Supp. 1999) *adopted in* R.I. GEN. LAWS § 10-9.1-1(a)(5) (1997). The Rhode Island statute is identical to S.C. CODE § 17-27-20(a)(5) (Law. Co-op. 1976 & West Supp. 1999).

83. 671 A.2d 1232 (R.I. 1996).

84. *Id.* at 1233. However, the judge ultimately dismissed the inmate's PCR application because the inmate's original conviction was still on appeal. *Id.* In accordance with South Carolina, the judge held that PCR is only appropriate once a conviction is final. *Id.*

85. R.I. GEN. LAWS § 42-35-15 (1956).

86. *Leonardo*, 671 A.2d at 1233.

87. *Id.*

88. *Young v. Ragen*, 337 U.S. 235, 238-39 (1949) (declaring that the States must afford inmates some "clearly defined method by which they may raise claims of denial of federal rights"). The Court in *Case v. Nebraska* suggested that the absence of a state post-conviction remedy may, in and of itself, be a violation of the Fourteenth Amendment. 381 U.S. 336, 337, 344 (1965) (Clark, J., concurring & Brennan, J., concurring); *see also* *Mooney v. Holohan*, 294 U.S. 103, 113 (1935).

South Carolina General Assembly, in 1969, adopted its version of the 1966 Uniform Post-Conviction Procedure (PCP) Act.<sup>89</sup> Legislative history offers little insight as to the General Assembly's motives.<sup>90</sup> However, the South Carolina Supreme Court has consistently interpreted the General Assembly's adoption of a PCR statute as affirmative compliance with the United States Supreme Court's mandate.<sup>91</sup> In *Finklea v. State*<sup>92</sup> the South Carolina Supreme Court, adopting the comments of the Uniform PCP Act,<sup>93</sup> stated that the aim of the PCR Act was "to bring together and consolidate into *one simple statute* all the remedies . . . which are at present available for challenging the validity of a *sentence of imprisonment*."<sup>94</sup> The court plainly stated that South Carolina's PCR Act was created to encompass all relief available under federal habeas corpus.<sup>95</sup> The General Assembly's adoption of a PCR Act and the South Carolina Supreme Court's subsequent interpretation of that action demonstrates that South Carolina's General Assembly intended the PCR Act to be a habeas-like substitute, crafted in compliance with the United States Supreme Court's directive to the states.

If the General Assembly intended the state's PCR Act to be a habeas-like substitute, then those claims cognizable under the writ of habeas corpus should be cognizable under the PCR Act. Arguably, the PCR Act should afford an even broader remedy than habeas corpus. If the Act's intent is to consolidate *all* post-conviction remedies into one *simple* statute,<sup>96</sup> then remedies provided by the writ of habeas corpus should constitute only a portion of the PCR Act's spectra of remedy. At the very least, the PCR Act should provide comparable relief.

Accordingly, the traditional use of habeas corpus to pursue certain noncollateral claims is strong evidence that those same claims should be cognizable under the state PCR Act. Historically, habeas corpus facilitated a broad range of claims which affect the "fact, length, or . . . conditions of confinement."<sup>97</sup> In *Withrow v. Williams*<sup>98</sup> Justice Scalia noted that habeas

89. S.C. CODE ANN. § 17-27-10 (Law. Co-op. 1976 & West Supp. 1999).

90. See Cowden, *supra* note 19, at 422 n.13 ("A search . . . revealed only that the bill was originally introduced . . . April 2, 1969 . . . . The bill was enrolled for ratification on April 23, and was ratified on April 29, 1969. No committee reports or staff memoranda were included in the file at the Archives.").

91. *Al-Shabazz*, 527 S.E.2d at 746; see also *Simpson v. State*, 329 S.C. 43, 46, 495 S.E.2d 429, 430-31 (1998) (outlining the history of habeas corpus and the advent of the PCR Act).

92. 273 S.C. 157, 255 S.E.2d 447 (1979).

93. *Finklea*, 273 S.C. at 158, 255 S.E.2d at 447; see UNIFORM POST-CONVICTION PROCEDURE ACT § 1, 11 U.L.A. 486 (1966).

94. *Finklea*, 273 S.C. at 158, 255 S.E.2d at 447-48 (first emphasis added); see Cowden, *supra* note 19, at 422.

95. *Finklea*, 273 S.C. at 158, 255 S.E.2d at 447-48.

96. *Id.*

97. 1 JAMES S. LIEBMAN & RANDY HERTZ, FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE § 9.1, 386 & n.30 (3d ed. 1998).

98. 507 U.S. 680 (1993).

corpus “jurisdiction . . . is . . . sweeping in its breadth.”<sup>99</sup> More specifically, federal courts have consistently permitted, and even required, inmates to use habeas corpus to raise claims relating to the duration of a sentence, including good-time credits<sup>100</sup> and prison conditions.<sup>101</sup> Any valid claim that “would advance the date of . . . eligibility for release from present incarceration . . . implicates the core purpose of habeas review.”<sup>102</sup> Since good-time credit and prison-condition claims were appropriate under habeas corpus, a statutory scheme, intended as a comparable substitute for the writ, would logically contemplate the same claims. For the PCR Act to be what the Supreme Court required and what the General Assembly intended (namely a substitute remedy for the Federal writ of habeas corpus) the state’s PCR Act should be read to include claims regarding good-time credits and prison conditions.

However, the General Assembly’s decision to place a one-year statute of limitations on applications for PCR<sup>103</sup> makes the interpretive issue a seemingly moot point. Presuming that claims regarding prison conditions or loss of good-time credits will arise well beyond a year after the conviction, the statute of limitations almost completely bars such claims, even in the absence of the court’s determination in *Al-Shabazz*. This is a disturbing result for several reasons. First, the result undermines South Carolina’s expectation that the Act would “comprehend[] and take[] the place of all other common law, statutory, or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.”<sup>104</sup> Second, this limitation raises the question as to whether South Carolina’s PCR Act continues to meet the United States Supreme Court’s mandate in *Case*.<sup>105</sup> Not squarely presented with such an issue in *Case*,<sup>106</sup> the Supreme Court has

99. *Id.* at 715 (Scalia, J. concurring).

100. LIEBMAN, *supra* note 97, § 9.1, 386-387 & n.33; *see id.* at 388 n.33, 390 (citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973) (“when a state prisoner is challenging the . . . duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to . . . [a] speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.”); Bostic v. Carlson, 884 F.2d 1267, 1269 (9th Cir. 1989) (stating that habeas corpus relief is available upon proof that state denied prisoner good-time credits); *see also* Heck v. Humphrey, 512 U.S. 477, 483, 487 (1994) (holding that habeas corpus is the only appropriate remedy to “call into question the lawfulness of . . . confinement”). Heck has been interpreted to make habeas corpus not merely the appropriate but the exclusive remedy for challenging the administration of good-time credits. LIEBMAN, *supra* note 97, § 9.1, 391 n.33.

101. LIEBMAN, *supra* note 97, § 9.1, 386-393 & n.33, 34.

102. *Id.* at 387 n.33 (quoting Garlotte v. Fordice, 515 U.S. 39, 47 (1995)).

103. S.C. CODE ANN. § 17-27-45(A) (West Supp. 1999). A PCR application “must be filed within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.” *Id.*

104. S.C. CODE ANN. § 17-27-20(b) (Law. Co-op. 1976 & West Supp. 1999). However, this statutory language has not been interpreted as strong as it seems. *See* Harvey v. South Carolina, 310 F. Supp. 83 (D.S.C. 1970) (holding that the PCR Act was not the only remedy to a state prisoner and its existence did not preclude habeas corpus as a remedy).

105. 381 U.S. 336 (1965).

106. *Id.* at 336-37.

yet to determine how complete the state PCR method must be as compared to the relief provided by habeas corpus.

Taken together, the plain language of the statute, the nature of habeas corpus, the demands of the Supreme Court, the actions of the General Assembly, and the language of South Carolina's courts overwhelmingly point to an interpretation contrary to the decision in *Al-Shabazz*. Ultimately, however, it is incumbent upon the General Assembly to decide whether they intended the statute of limitations to have the effect of excluding these noncollateral matters and whether such an exclusion remains in line with the purpose of the PCR Act. The General Assembly and the court, for the foregoing reasons, should find that the *Al-Shabazz* decision does not serve the purposes of the PCR Act.

### *B. The Administrative Procedure Act v. The Post-Conviction Relief Act*

Nevertheless, inmates will no longer be able to pursue their claims regarding loss of good-time credit and prison-conditions through the PCR mechanism.<sup>107</sup> The question remains whether inmates will fair better or worse under the APA.

The primary advantage of the APA over the PCR Act is the APA's automatic right of review.<sup>108</sup> Although this right is not absolute, the United States Constitution entitles prisoners to adequate, effective, and meaningful access to the courts.<sup>109</sup> The court in *Al-Shabazz*, while lauding the Department's "expert" maintenance of the state prison system, tactfully recognized that the Department's disciplinary proceedings are not flawless.<sup>110</sup> The court recognized "that errors and omissions, whether caused by bureaucratic oversight, a misunderstanding of the law, or an intentional act, are likely to occur in a system that closely controls the lives of some 21,500 inmates on any given day."<sup>111</sup> This admission validates inmates' presumed concerns, that their "keepers" are acting as judge, jury, and prosecuting attorney. Judicial review operates as a necessary check on the Department's authority.

The PCR Act also provides judicial review of Department proceedings but on a discretionary basis.<sup>112</sup> Obviously, a court's dismissal of a PCR application cannot be made arbitrarily or in the absence of proper procedure,<sup>113</sup> but a denial

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107. *Al-Shabazz*, 527 S.E.2d at 741.

108. S.C. CODE ANN. § 1-23-380(A) (Law. Co-op. Supp. 1998); see *Al-Shabazz*, 527 S.E.2d at 752; Eldon D. Wedlock, Jr., *Al-Shabazz and the APA*, 11 S.C. LAW. 42, 44 (1999).

109. *Bounds v. Smith*, 430 U.S. 817, 821 (1977).

110. *Al-Shabazz*, 527 S.E.2d at 757.

111. *Id.*

112. S.C. CODE ANN. § 17-27-70(b)-(c) (Law. Co-op. 1976 & West Supp. 1999).

113. See, e.g., *Delaney v. State*, 269 S.C. 555, 238 S.E.2d 679 (1977) (holding that the denial of PCR application was inappropriate without an evidentiary hearing upon the issues raised by the inmate); *Coardes v. State*, 262 S.C. 493, 493, 206 S.E.2d 264, 266 (1974) (affirming a dismissal of a PCR application when there was no material allegation of fact).

of a PCR application remains more discretionary than the right of review under the APA.<sup>114</sup> Ironically, this discretion is evidenced best by the courts' treatment of these noncollateral claims. In *Simmons v. State*<sup>115</sup> the South Carolina Supreme Court admitted that conditions of imprisonment have been considered on a discretionary basis in PCR proceedings.<sup>116</sup> Additionally, judges may dismiss applications at any time when they feel that "no purpose would be served by any further proceedings."<sup>117</sup>

Ultimately, however, PCR proceedings involve two, superior procedural advantages over the APA right of judicial review. First, the APA's guaranteed right of review loses some vitality in light of its lower standard of review.<sup>118</sup> While *Al-Shabazz* resolved the role of the ALJ's in this new process,<sup>119</sup> the decision does not appear to improve the inmates' dilemma. Upon final disposition by the Department regarding a prison-condition down-grade or a loss of good-time credits, the inmate may appeal to an ALJ.<sup>120</sup> The ALJ reviews the Department's determination in an "appellate capacity."<sup>121</sup> Likewise, the

114. S.C. CODE ANN. § 17-27-70(b) (Law. Co-op. 1976 & West Supp. 1999). On the other hand, appeals of ALJ determinations are "by right." *Id.* § 1-23-610(B).

115. 316 S.C. 28, 446 S.E.2d 436 (1994)

116. *Id.* at 437.

117. S.C. CODE ANN. § 17-27-70(b) (Law. Co-op. 1976 & West Supp. 1999).

118. S.C. CODE ANN. § 1-23-380(A)(6) (Law. Co-op. Supp. 1998) establishes the following standard of review for the court in evaluating the Department's decision:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

119. *Al-Shabazz*, 527 S.E.2d at 754.

120. *Id.*

121. *Id.*; see *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (stating that the ALJ is restricted to an appellate capacity). However, the court in *Al-Shabazz* did not specify the appellate standard of review. *Al-Shabazz*, 527 S.E.2d at 754. In fact the court could not identify an APA provision that required ALJ's to assume an appellate role and instead relied on case law. *Id.* at \*9. However, the court in *Al-Shabazz* appears to misinterpret the holding of *Reliance*. The court suggests that *Reliance* stands for the "converse proposition that an ALJ is restricted to reviewing the decision below when acting in an appellate capacity." *Id.* Yet the court of appeals in *Reliance* expressly states that a proceeding "before the ALJ is in the nature of a de novo hearing." *Reliance*, 327 S.C. at 534, 489 S.E.2d at 677. Thus, contrary to the decision in *Al-Shabazz*, the ALJ appears unrestricted by the findings of the court below. See *id.* The court should revisit this determination in *Al-Shabazz* and clarify the authority for its finding. Inmates and practitioners need to know whether the ALJ will review the contested

circuit court judge, upon judicial review of the ALJ's determination, is not allowed to "substitute its judgment . . . as to the weight of the evidence."<sup>122</sup> The court may reverse the ALJ's determination only if it is "clearly erroneous in view of . . . substantial evidence . . . arbitrary . . . capricious or characterized by abuse of discretion."<sup>123</sup>

Thus the court's decision forces the ALJ to review the Department's determination under some appellate standard of review,<sup>124</sup> and then the circuit court judge likewise reviews the ALJ's determination under an appellate standard of review.<sup>125</sup> It is appellate review of an appellate review. This process appears different even from the state court system of review where the highest appellate court generally sits in the same position as the intermediate appellate courts. In this case, the circuit court does not review the Department's decision for error, but rather the circuit court reviews the ALJ's decision for error.<sup>126</sup> Thus the circuit court's review ultimately proves increasingly attenuated from any meaningful adjudication of the inmate's original complaint. Accordingly, the inmate bears a heavy and confusing burden when seeking reversal of an unfavorable Department decision.

A PCR proceeding, on the other hand, is not really a *review* at all, but rather an original action.<sup>127</sup> The judge considers all evidence and testimony *de novo*.<sup>128</sup> The court then makes both specific findings of fact and conclusions of law.<sup>129</sup> Thus the court is virtually unrestricted by the determinations of the Department. If the inmate is disappointed with the Department's determination, the inmate may make the challenge anew, without prejudice, before the circuit court judge in a PCR proceeding.<sup>130</sup>

case *de novo* or under some other appellate standard of review.

122. S.C. CODE ANN. § 1-23-380(A)(6) (Law. Co-op. Supp. 1998).

123. *Id.* The court stated:

Substantial evidence is relevant evidence that, considering the record as a whole, a reasonable mind would accept to support an administrative agency's action. Substantial evidence exists when, if the case were presented to a jury, the court would refuse to direct a verdict because the evidence raises questions of fact for the jury. It is more than a mere scintilla of evidence, but is something less than the weight of the evidence.

*Al-Shabazz*, 527 S.E.2d at 756.

124. *See supra* note 121.

125. *See supra* note 70 and accompanying text.

126. *Id.*

127. S.C. CODE ANN. § 17-27-80 (Law. Co-op. 1976).

128. *Id.*

129. *Id.*

130. At first blush, the PCR Act might appear to give the inmate "two bites at the apple." If the inmate is satisfied with the Department's determination, then the inmate will let the decision stand. If the inmate is dissatisfied, then the inmate can essentially "retry" the entire issue. However, considering that the Department's administrative proceeding requires significantly less due process protections than the PCR proceeding, these are not two equal "bites." Under the PCR Act "[a]ll rules and statutes applicable in civil proceedings are available to the parties. The court may receive proof by affidavits, depositions, oral testimony or other



The second advantage of the PCR Act is that an indigent applicant who is granted a hearing is entitled to court-appointed counsel.<sup>131</sup> This entitlement is significant in two respects. Under the APA the inmate is prejudiced by the development of an initial record without the assistance of trained counsel.<sup>132</sup> During the Department's proceeding the inmate only has a right to a "counsel substitute, a non-attorney designated to assist the inmate or represent him at the hearing."<sup>133</sup> It is crucial to develop an accurate and fair record in the Department and ALJ proceedings because under the APA the circuit court judge has little discretion to reverse the ALJ and Department determinations, and the judge makes no independent factual findings at all.<sup>134</sup> Thus crucial mistakes by non-attorney counsel in the Department proceedings or before an ALJ may create a record that might irreversibly damage an inmate's judicial review under the APA. In contrast, errors made on the part of non-attorney counsel are of no detriment in a PCR proceeding before the department, because issues of fact are wholly reconsidered before the judge.

Additionally, the APA does not entitle an inmate to court-appointed counsel upon judicial review of the Department's determination.<sup>135</sup> Thus, even upon judicial review of the Department's findings, the inmate will continue to be unrepresented by an attorney.

In short, by embracing review under the APA the court has adopted a procedure through which unaided inmates will assuredly fumble. Inmates cannot consistently fare better under the APA than under the PCR Act when they are prejudiced by an inadequately developed record, handicapped by the absence of court-appointed counsel, and restricted to the lowest standard of review for error.

#### IV. CONCLUSION

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evidence and may order the applicant brought before it for hearing." *Id.* Alternatively, the disciplinary hearings do not include a right to appointed counsel or an absolute right to confront witnesses. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, MANUAL FOR OPERATIONS, INMATE DISCIPLINARY SYSTEM, No. OP-22.14. Additionally, where the APA would otherwise require an agency to allow depositions, subpoenas, and other evidentiary tools, the court has declined to make these APA provisions applicable to the Department. *Al-Shabazz*, 527 S.E.2d at 752-53. Thus, the PCR proceeding is arguably the first true and complete adjudication of the complaint on the merits.

131. See S.C. CODE ANN. § 17-27-60 (Law. Co-op. 1976); *Whitehead v. State*, 310 S.C. 532, 534, 426 S.E.2d 315, 316 (1992); S.C.R. Civ. P. 71.1(d). See generally *Cowden supra* note 19 (tracing the effects of this provision and suggesting improvements).

132. S.C. Code Ann. §§ 1-23-310 to -400 (West Supp. 1999).

133. SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, MANUAL FOR OPERATIONS, INMATE DISCIPLINARY SYSTEM, No. OP-22.14. Ironically the Department appears to go beyond what the United States Supreme Court requires in a prison disciplinary hearing. *Wolff*, 418 U.S. at 570 (stating that an inmate is only entitled to a prison employee or a fellow inmate). Presumably "non-attorney" counsel might include someone other than a prison employee or a fellow inmate.

134. See S.C. CODE ANN. § 1-23-380(A)(6) (West Supp. 1999).

135. See *id.* §§ 1-23-380 to -390.

The Court's decision in *Al-Shabazz* bars inmates from a meaningful use of the PCR Act when certain protected liberty interests are at stake. While the PCR process is clear, efficient, and understood, use of the APA will subject inmates to an experiment in post-conviction remedy. The PCR Act provides a procedurally more beneficial mechanism for inmates to pursue certain noncollateral claims. Thus, the South Carolina Supreme Court should not have abandoned an understood process that by its very nature comprehended all available post-conviction remedies. Now inmates, attorneys, and judges must explore and familiarize themselves with the application of two distinct processes to resolve what amounts to the same claim: a protected liberty interest. Accordingly, the General Assembly must examine whether they intended to bar noncollateral claims that legitimately arise well beyond the statute of limitations. The South Carolina Supreme Court should then revisit *Al-Shabazz* and find, consistent with both the language and the express purpose of the Act, that PCR, and not the APA, most completely and efficiently serves inmates' needs.

*D. Josev Brewer*

